

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN D. GORDON,

Petitioner,

vs.

Civil Case No. 00-75355
Crim. Case No. 92-CR-81127-33

UNITED STATES OF AMERICA,

Respondent.

_____ /

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

I.

This is a criminal case. Before the Court is Petitioner John Gordon's motion for reconsideration of the denial of his motion for relief from judgment under Fed. R. Civ. P. 60(b). For the reasons that follow, the motion is DENIED.

II.

In his Rule 60(b) motion, Petitioner argued that he was entitled to relief because he did not have an opportunity to respond to the government's motion to dismiss his motion under 28 U.S.C. § 2255.¹ Petitioner's § 2255 motion raised a claim of ineffective assistance of counsel which the Court rejected. The Court denied the 60(b) motion on the grounds that (1) it was not filed within a reasonable time, (2) the Court fully considered Petitioner's ineffective assistance of counsel claim in denying Petitioner relief

¹The government, at the Court's request, filed a response to Petitioner's 60(b) motion. Petitioner did not file a reply.

under § 2255, and (3) Petitioner failed to explain how a response to the government's motion would have changed the Court's conclusion. See Order filed December 2, 2009.

III.

Petitioner's motion is governed by E.D. Mich LR 7.1(g), which provides in relevant part:

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

Petitioner fails to satisfy this standard. Petitioner still has not indicated what he would have filed in response to the government's motion to dismiss his § 2255 motion which would have persuaded the Court that his ineffective assistance of counsel claim had merit. The fact that Petitioner did not file a response to the government's motion to dismiss is not an error warranting relief under Rule 60(b). Nothing in Petitioner's motion convinces the Court otherwise.

SO ORDERED.

Dated: January 4, 2010

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was mailed to John D. Gordon, #20211-039, FMC Devens, Federal Medical Center, P.O. Box 879, Ayer, MA 01432 and the attorneys of record on this date, January 4, 2010, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160